No.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STANLEY WILLIAMS,	)
	) **EXECUTION IMMINENT**
Petitioner,	)
	) **DECEMBER 13, 2005**
v.	)
	)
S.W. ORONSKI, Warden, San Quentin State Prison, San Quentin, California,	)
	)
Respondent.	)
	)

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO HIS APPLICATION TO FILE SUCCESSOR PETITION

Stanley Williams, by and through his attorney Verna Wefald, respectfully submits this reply to respondent's opposition to his application for permission to file a successor petition for writ of habeas corpus under 28 U.S. C. 2244 (d) and 2254.

Respectfully submitted,

Dated: December 12, 2005

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Verna Wefald

REPLY

Respondent's primary answer to Petitioner's new claims is that the evidence presented now could have been presented earlier. Petitioner agrees, and goes one huge step further: it all **should** have been presented earlier. But the failing has not been Petitioner's, only the execution will be his.

In indisputable violation of a crucial federal statute that Petitioner personally cited to this Court, Petitioner was saddled with an utterly inexperienced and ineffectual habeas lawyer for the entirety of his federal proceedings, both in the district court and in this Court. As clearly set forth in the motion to file a successor petition, a crucial reason Petitioner's new claims were not presented earlier is that Petitioner was not provided the statutorily qualified counsel to which he was entitled. (Motion, 6-20)

Federal Public Defender Maria Stratton is a consummate professional this Court has known and been privileged to have as a member of its bar for years. In a show of courage and honesty, hallmarks of her true and unwavering nature, she has consistently stood up forthrightly in response to Petitioner's complaint and told the Court that Petitioner's counsel, who she assigned to this case, had no relevant experience. If permitted an opportunity, Petitioner will be able to demonstrate further that habeas counsel's failings were openly known to the district court and are further and equally clearly revealed by that court's records.

Petitioner most respectfully asks whether any member of this Court would have continued to be represented by a lawyer who received an order like the one this Court issued on April 20, 2001. (SE 152) Petitioner respectfully submits not only would no member of this Court have continued with such counsel, no informed litigant with financial means would have done so. How is 21 U.S.C. § 848 to have meaning if this Court will not honor it?

This Court has been aware of the problem since 2000 and deliberately ignored it. The crucial role qualified habeas counsel plays is highlighted by what has happened in this matter in the last two months.[1] The undersigned has no doubt that with additional time far greater erosion will come to light concerning the prosecution's case. The only doubt counsel has, and it is a grave one, is whether this Court will recognize its own failing and allow Petitioner a fair opportunity for redress.

NONE OF THE CLAIMS WERE REJECTED ON THE MERITS IN PRIOR PETITIONS

Respondent argues that because Petitioner has previously raised claims regarding the Prosecution's Brady violations that he cannot raise any Brady claim now even though the factual predicate of that allegation is different. (Opp at 11-12.) Respondent contends that "when 'the basic thrust or gravamen of the legal claim is the

[1] This includes the discovery of claims before this Court Petitioner lost due to prior counsel's deficiencies. Motion 19-21.

same' the claim is considered successive even though it is supported by 'different factual allegations.'" Opp at 12, citing Babbit v. Woodford, 177 F.3d 744, 746 (9th Cir. 1999. He is wrong, and none of the authorities he cites for this proposition concern Brady allegations.

Second, in Sanders v. United States, 373 U.S. 1 (1963), in regard to successive 2255 motions, the Supreme Court noted that "identical grounds may be proven by different legal arguments or be couched in different language or vary in immaterial respects." Id. at 16. Nevertheless, "[s]hould doubts arise in particular cases as to whether two grounds are different or the same, they should be resolved in favor of the applicant." Ibid (citations omitted). To be successive, "the prior denial must have rested on an adjudication of the merits of the ground presented in the subsequent application." Ibid. None of the claims being raised now were adjudicated on the merits in a prior petition, not even the drugging claim.

THE CLAIMS INDIVIDUALLY AND COLLECTIVELY SHOW PETITIONER IS ACTUALLY INNOCENT

Respondent does not dispute that any of the undisclosed evidence was in fact disclosed. It simply argues that even if one item of evidence or a particular witness were to be removed from the case, Petitioner cannot show innocence because

there were other witnesses. (Resp at 14.) Respondent fails to acknowledge that the final determination of materiality is based on the "suppressed evidence considered collectively, not item by item." Kyles v. Whitley, 514 U.S. at 436-37; Paradis v. Arave 240 F.3d 1169 (9th Cir. 2001). See also Carriger v. Stewart, 132 F.3d 463 (9th Cir. 1997) (multiple failures to disclose impeachment evidence of informant who may have been true killer shows actual innocence under Schlup v. Delo, 513 U.S. 298 (1995).)

Respondent also generally asserts that the informants were already impeached and thus this defeats petitioner's claims of innocence. Of course, these multiple failures to disclose cannot be justified by asserting that the state's witnesses were already impeached. "That is true, but not true enough; inconsistencies . . . provided opportunities for chipping away but not for the assault that was warranted." Kyles v. Whitley, 514 U.S. 419, 443 (1995). Clearly the merits of Petitioner's new claims are in dispute. If this successive petition is allowed to go forward, Petitioner will prove the merits of his claims in the district court.

CONCLUSION

This Court should grant the requested relief.

Respectfully submitted,

Dated: December 12, 2005

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Verna Wefald